FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE,
NAGPUR BENCH, NAGPUR

Miscellaneous Civil Application No. 1041/2006

(Vinod Hariram Gupta **VERSUS** State of Maharashtra Thr. Collector & 6 others **)**

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. Joshi, Advocate for the applicant.
Mrs. Wasnik, Assistant Government Pleader for the R-1 to 6.
Mr.Malokar, Advocate for the R-7.

CORAM : Smt. Vasanti A. Naik, J.
DATE : 20th August, 2007.

Mr.C.A.Joshi, the learned counsel for the applicant, submits that the applicant was suffering from Chikun Guniya at the relevant time when the matter was dismissed for want of prosecution, and therefore, was not able to contact his counsel and give any instructions to his counsel. The counsel for the applicant further submits that in case the Second Appeal No.411/1991 is restored to file, the applicant would not prosecute the matter on merits and would be satisfied if some other alternative site is granted to the applicant.

Shri Malokar, the learned counsel for the respondent no.7, strongly opposed the prayer made in this civil application and submitted that the applicant has already been granted some alternative site and the applicant has occupied the same and is also depositing the rent for occupying the same. He further submit that the application is totally misconceived as in effect, the matter was not dismissed for non prosecution but, was dismissed in

view of the statement made by the counsel for the applicant that the applicant has received some alternate site for carrying on his business. The counsel for the respondent no.7 further submits that the civil application is also liable to be dismissed as certain material facts are suppressed by the applicant while filing this civil application.

The restoration of the second appeal, even for considering the limited request made on behalf of the applicant, was not necessary in the interest of justice on the facts stated in the civil application and those stated in the reply by the respondent no.7. But, since the applicant was ready to pay costs to the respondent no.7 so as to seek the relief of restoration of the Second Appeal No.411/1999, the Second Appeal No.411/1999 is restored to file on the condition that the appellant pays costs of Rs.5,000/- (Rupees Five Thousand only) within a period of two weeks from today.

It is needless to mention that the respondent no.7 would be entitled to raise the objections to the limited prayer which would be made by the applicant in the second appeal after it is restored to file.

The civil application is allowed on the aforesaid terms and disposed of.

JUDGE